In The

Supreme Court of the United States

October Term, 1972

No. 71-6516

CHARLES D. BRADEN ..... PETITIONER

Vs.

28th JUDICIAL CIRCUIT COURT
OF KENTUCKY ..... RESPONDENT

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT

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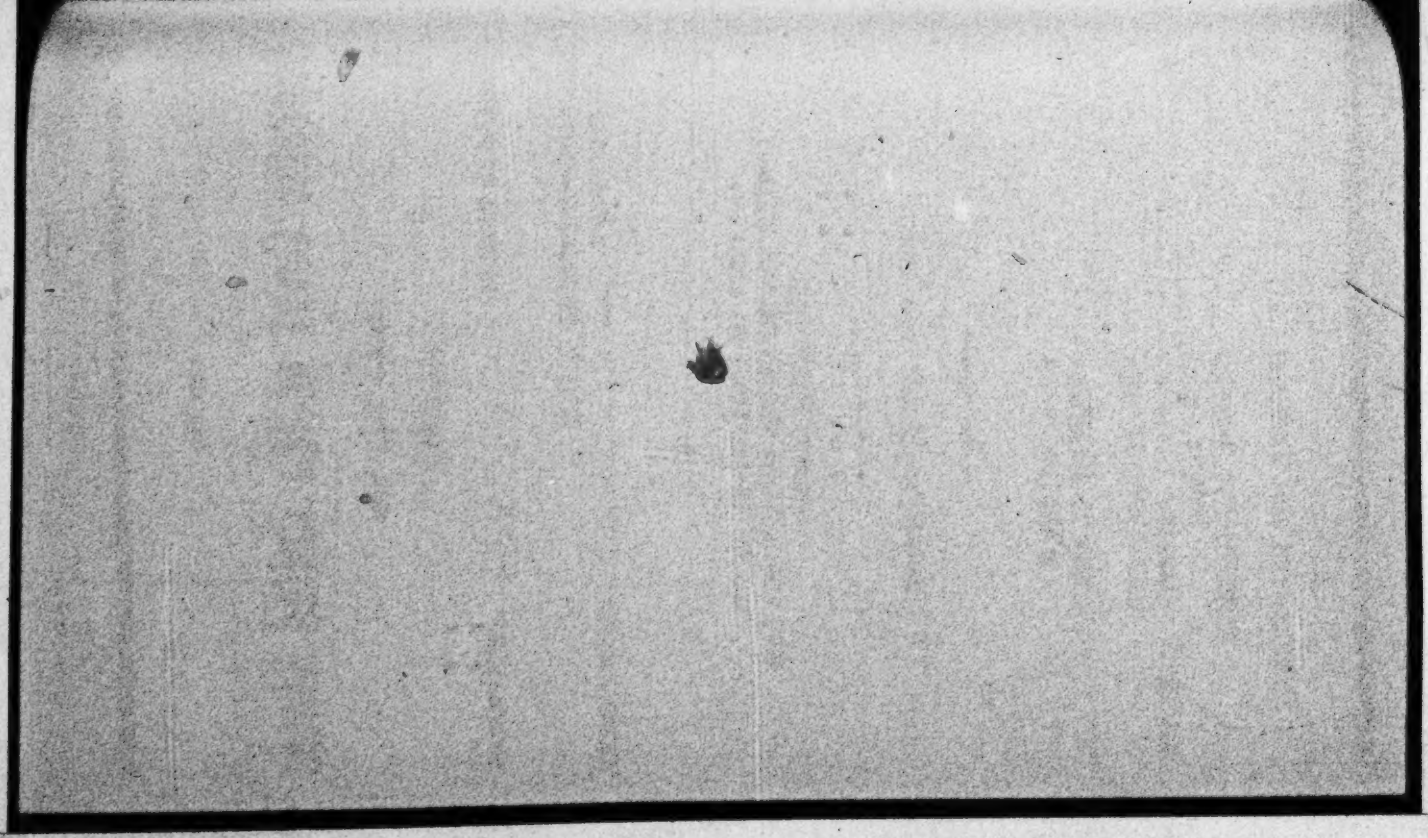

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In The

Supreme Court of the United States

October Term, 1972

No. 71-6316

CHARLES D. BRADEN ---------- *PETITIONER*

Vs.

30TH JUDICIAL CIRCUIT
COURT OF KENTUCKY ---------- *RESPONDENT*

BRIEF FOR THE RESPONDENT

QUESTION PRESENTED

WHETHER THIS CASE IS A PROPER ONE FOR THIS COURT'S RECONSIDERATION OF ITS DETERMINATION IN *NELSON V. GEORGE* TO LEAVE TO CONGRESS THE RESOLUTION OF THE INTERSTATE HABEAS CORPUS JURISDICTIONAL PROBLEM; WHETHER THAT DETERMINATION IS IN ANY EVENT FOR THE CONSIDERATION OF THE UNITED STATES CONGRESS AND NOT THIS COURT.

STATEMENT OF THE CASE

Petitioner has accurately stated the case and that statement is accepted by the respondent. However, we do emphasize that the Commonwealth of Kentucky previously returned the petitioner for trial on the indictments in question from the distant state of California and that petitioner would have received the speedy trial of which he now complains but for his own escape.

SUMMARY OF ARGUMENT

The case at bar is not a proper case for this court's reconsideration of its decision in *Nelson v. George*, 399 U.S. 224 (1970) to leave to Congress the resolution of the interstate habeas corpus jurisdictional problem. This petitioner is unlike the petitioners in *Smith v. Hooey*, 393 U.S. 374 (1969), *Peyton v. Rowe*, 391 U.S. 54 (1968), and *Word v. North Carolina*, 406 F.2d 352 (4th Cir. 1969). Petitioner was afforded a speedy trial at the expense of Kentucky and would have received that which he now demands but for his own conduct. We are cognizant of the relief provided individuals under the holdings of the aforementioned cases; however, the factual distinction to which we have alluded sets the instant case apart from *Smith*, *Peyton* and *Word*. Therefore, due to this controlling factual difference, the case at bar is not a proper one for a deviation from this Court's opinion in *Nelson*, supra.

In any event, establishment of jurisdiction of United States Courts is vested in Congress by Article III, Sections I and II of the United States Constitution, and Congress has fixed habeas corpus jurisdiction of United States District Courts exclusively in the district of confinement.

ARGUMENT

THIS CASE IS NOT A PROPER ONE FOR THIS COURT'S RECONSIDERATION OF ITS DETERMINATION IN *NELSON V. GEORGE* TO LEAVE TO CONGRESS THE RESOLUTION OF THE INTERSTATE HABEAS CORPUS JURISDICTIONAL PROBLEM; THIS DETERMINATION IS IN ANY EVENT FOR THE CONSIDERATION OF THE UNITED STATES CONGRESS AND NOT THIS COURT.

There is indeed irreconcilable conflict among the various circuit courts on the question of the territorial jurisdiction of United States District Courts to entertain writs of habeas corpus

when the petitioner is incarcerated in one district and the custodial authority from which he seeks relief is in another.

In *Ahrens v. Clark*, 335 U.S. 188 (1948), this Court confided that Federal habeas corpus jurisdiction is vested exclusively in the court where the petitioner is confined. The recent trend in extraterritorial use of the Great Writ has resulted in vigorous and frequent attacks on the continuing vitality of the *Ahrens* view. However, in *Nelson v. George*, 399 U.S. 224, this Court stated:

> "The legislative history of the 1966 amendments to 28 USC § 2241(d) (1964 ed,Supp V) suggests that Congress may have intended to endorse and preserve the territorial rule of Ahrens to the extent that it was not altered by those amendments. See HR Rep No. 1894, 89th Cong, 2d Sess, 1-2 (1966). See also S Rep No. 1502, 89th Cong, 2d Sess (1966). Those changes were made by Congress, of course, prior to our decision in Peyton v. Rowe; necessarily Congress could not have had the multistate problem with which we are now confronted in mind. Whether, in light of the legislative history of § 2241(d) and the changed circumstances brought about by Peyton v. Rowe, the rigor of our Ahrens holding may be reconsidered is an issue upon which we reserve judgment.
>
> "However, we note that prisoners under sentence of a federal court are confronted with no such dilemma since they may bring a challenge at any time in the sentencing court irrespective of where they may be incarcerated. 28 USC § 2255. It is anomalous that the federal statutory scheme does not contemplate affording state prisoners that remedy. *The obvious, logical, and practical solution is an amendment to § 2241 to remedy the shortcoming that has become apparent following the holding in Peyton v. Rowe. Sound judicial administration calls for such an amendment.*" (Emphasis added).

It is noteworthy in this respect that legislation to remedy the instant jurisdictional problem is pending in Congress and

has been referred to the House Judiciary Committee. H.R. 3804, Congressional Record 117, Part II, page 1860.

Notwithstanding *Nelson v. George* and the actual pendency of this question before the Congress, petitioner seeks to overturn *Ahrens v. Clark* in this proceeding. There are two sound reasons, we submit, why the Court should not do so. In the first place, petitioner is in an anomalous position to be raising the question. He admits that the State of Kentucky has already returned him from California to the State of Kentucky at state expense for the trial he now seeks. Petitioner cites no authority for the proposition that a state must bear the expense of returning a defendant for trial as often as he can escape, and we are aware of none. At least to the extent that he is entitled to immediate return for trial at state expense, petitioner, through his criminal act of escape, has foreclosed himself from relief by his voluntary rejection of the speedy trial which was afforded him.

In the second place, Congress has clearly fixed habeas corpus jurisdiction in the district of confinement to the exclusion of any other, and any right petitioner has must be enforced in that district.

It has frequently been asserted that it is the prerogative of this Court to crash through the jurisdictional barrier of *Ahrens* 335 U.S. 188 and extend the jurisdiction of district courts in habeas corpus proceedings to any district in which a petitioner may have a complaint. We do not agree. Article III, Sections I and II, of the United States Constitution vests in the Congress of the United States the power to establish United States courts and to fix their jurisdiction. Congress has clearly vested the habeas corpus jurisdiction of the United States District Courts in the district of confinement by 28 U.S.C. § 2241, and in *Ahrens v. Clark*, this Court precisely so held. There has been ample opportunity since the recent extraterritorial expansion of habeas corpus principles, and particularly the decision in *Nelson v. George*, for Congress to act if it disagrees with the construction of 28 U.S.C.

§ 2241 under *Ahrens v. Clark*, supra. Failure of Congress to act must be deemed as congressional approval of that construction.

The vigorous attacks on *Ahrens v. Clark*, supra, are pitched largely on the argument that there are many habeas corpus rights for which a petitioner would have no remedy in the absence of extension of habeas corpus jurisdiction to districts other than those where the petitioner is confined. The argument is that this Court should ignore jurisdictional law in order to fashion a remedy for a right which has been recognized. We believe this argument focuses in the wrong area. Jurisdiction is clearly fixed in the court of confinement. If any remedy is to be fashioned by the courts, it must be fashioned in that territorial district. If there is an unqualified right to speedy trial relief under circumstances such as those existing in this case, then it must be within the jurisdiction of the court in the district of confinement to make such a declaration. The absence of personal jurisdiction over a defendant state or an officer thereof would, we respectfully submit, be no more of a bar to relief in such an action than it is in a divorce proceeding or any other type of *in rem* action. Where it is the defendant's relationship in his rights as against the state which is in issue, and a district court has jurisdiction over the person of the petitioner as it undoubtedly does and over that subject matter, the right to grant relief would adhere in the same court.

Moreover, this frequently advanced argument of impossibility and unavailability of remedy clearly overlooks other judicial processes which might be available. For instance, it overlooks the potential availability of relief under the Declaratory Judgment Act as alluded to by the court below. See footnote 1, Braden v. 30th Judicial Circuit Court of Kentucky, 454 F.2d 145 (6th Cir. 1972).

In summary, we reiterate that this petitioner who escaped from his speedy trial confinement is in no position to complain on that score. If he is, the remedy, we submit, is not an uncon-

stitutional legislative-type enlargement of habeas corpus jurisdiction by this Court, but rather a judicial application that the proper rule of law is in the district of confinement, the court having jurisdiction, or a judicial application of the proper law in a declaratory judgment.

In other words, the Congress has by 28 U.S.C. § 2241 stated within the powers entrusted to it under the United States Constitution in which court this litigation should be brought. Judicial instruction should focus on the application of the appropriate remedy in that court and not on an unconstitutional usurpation of legislative powers by a rejection of the jurisdictional limitations fixed by Congress long ago.

We might add that, on balance, it would appear simpler and less expensive for the State of Kentucky to litigate such questions in one of its own Federal judicial districts. However, it is within the competence of Congress to determine where habeas corpus actions must be brought and, as this Court held in *Ahrens v. Clark*, 335 U.S. 188, Congress has already made that determination in a different way.

CONCLUSION

Based upon the foregoing reasons, we respectfully submit that the judgment of the lower court was correct and should be affirmed. Should the Court feel otherwise, we submit that this case should be remanded for consideration of the effect of petitioner's escape upon his right to demand speedy trial relief.

Respectfully submitted,

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